

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

BRYANT CALLOWAY

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Case #2:17-cr-00518-JS-1

ORDER

AND NOW, to wit, this day of , 2018, upon consideration of the Defendant's Motion to Suppress Evidence, it is hereby **ORDERED** that said motion is **GRANTED**. All evidence obtained by the United States from its search of 5111 Funston Street is hereby suppressed, and that any evidence obtained from the residence shall not be used for any purpose whatsoever at the trial of this case upon its merits.

BY THE COURT:

Juan R. Sanchez, J.

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	:	
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DEFENDANT’S MOTION TO SUPPRESS EVIDENCE

TO THE HONORABLE JUAN R. SANCHEZ, JUDGE OF THE SAID COURT:

Defendant, Bryant Calloway, by and through his attorney, Benjamin B. Cooper, hereby moves to suppress evidence, and in support thereof, states as follows:

1. On August 7, 2013, law enforcement obtained a search warrant for 5111 Funston Street. The basis for this warrant was information from a confidential source that Mr. Calloway had admitted killing someone on August 5, 2013. Mr. Calloway was subsequently indicted federally for using a firearm in relation to murder.

2. The warrant does not state any corroboration of evidence related to the murder would be recovered at 5111 Funston Street, and the warrant shows no basis for the reliability of the source.

3. At the time of the search warrant application, the source was known by police to be corrupt. Police did not reveal this information to the judicial authority approving the warrant. Therefore, the warrant does not reflect all information known to police for the judicial authority to determine the reliability of the informant.

4. The affidavit of probable cause was therefore made in reckless disregard for the truth.

5. Excising the confidential source information from the warrant results in no probable cause for the search. Franks v. Delaware, 484 U.S. 154 (1978).

6. The warrant's four corners do not establish a nexus between the alleged criminal activity and the address of 5111 Funston Street which support search of this location.

MEMORANDUM OF LAW

Probable cause is a fluid concept-turning on the assessment of probabilities in particular factual contexts – not really or usefully reduced to a neat set of legal rules. Illinois v. Gates, 462 U.S. 213, 232 (1983). The four corners of the warrant and the affidavit do not establish probable cause to search the residence in question they do not establish a nexus between any alleged criminal activity and the residence. Further, the warrant shows no basis for the informant's reliability. Spinelli v. United States, 290 U.S. 410 (1969); Aquilar v. State of Texas, 378 U.S. 108(1964)

CONCLUSION

This warrant and its accompanying affidavit are flatly insufficient to establish probable cause to search 5111 Funston Street. Further, the application and affidavit for the search warrant were made in reckless disregard for its truth. This Court should enforce the protections of our Federal Constitution. This Court should embrace the civil liberties to which we are all entitled in a free society and strike down the deprivation of rights that has taken place.

WHEREFORE, Defendant, Bryant Calloway, respectfully requests this Honorable Court: (1) suppress the evidence recovered from 5111 Funston Street; or, (3) order a Franks hearing.

Respectfully submitted,

/s/ Benjamin B. Cooper
The Cooper Law Firm
By: Benjamin B. Cooper, Esquire
1500 Walnut Street, 22nd Floor
Philadelphia, PA 19102
(215) 732-7200
Attorney for Defendant

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CERTIFICATE OF SERVICE

I, Benjamin B. Cooper, Esquire, hereby certify that I am this 16th day of July 2018 electronically filing Defendant's Motion to Suppress, as well as serving a true and correct copy of same upon the following by first class mail, postage prepaid:

Jonathan Ortiz, Asst. U.S. Atty.
U.S. Department of Justice
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106-4476

/s/ Benjamin B. Cooper
The Cooper Law Firm
By: Benjamin B. Cooper, Esquire
1500 Walnut Street, 22nd Floor
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Attorney for Defendant